TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]167

WILLIAM W. KNIGHTS, PLAINTIFF IN ERROR,

vs.

JAMES JACKSON, TREASURER AND RECEIVER GENERAL.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

FILED SEPTEMBER 7, 1921.

(28,473)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 518.

WILLIAM W. KNIGHTS, PLAINTIFF IN ERROR,

vs.

JAMES JACKSON, TREASURER AND RECEIVER GENERAL.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 26, 1921.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the United States District Court, Massachusetts.]

The President of the United States to the Honorable the Judges of the Supreme Judicial Court of the Commonwealth of Massachusetts, holden at Worcester within and for the County of Worcester, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Judicial Court before you, or some of you, being the highest court of law or equity of the Commonwealth of Massachusetts in which a decision could be had in the said suit between William W. Knights Plaintiff and James Jackson, Treasurer and Receiver General Defendant, in a petition for writ of mandamus wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened, to the great damage of the said William W. Knights as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the fourth day of August in the year of our Lord one thousand nine hundred and twenty one.

ARTHUR M. BROWN,
Deputy Clerk of the District Court of the United States, District of Massachusetts.

Allowed by
ARTHUR P. RUGG,
Chief Justice of the Supreme Judicial Court of Massachusetts.

COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

And now, here, the Judges of the Supreme Judicial Court make return of this writ by annexing hereto and sending herewith, under

the seal of the said Supreme Judicial Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I, T. S. Johnson, Clerk of said Supreme Judicial Court, have hereto set my hand and the seal of said court this twenty-third day of August, A. D. 1921.

[SEAL.] T. S. JOHNSON,
Clerk.

[Endorsed:] Writ of Error to State Court.

2 139,700.

Bond.

Know all Men by these Presents that we William W. Knights of Hopedale in the County of Worcester as principal and the United States Fidelity & Guaranty Company a corporation organized and existing under the laws of Maryland and having its principal office in Baltimore as surety are held and firmly bound unto James Jackson, of Westwood in the County of Norfolk, in the full and just sum of five hundred dollars ($500) to be paid to the said James Jackson or to his certain Attorney, Executors, Administrators or Assigns, to which payment well and truly to be made we bind ourselves, our Heirs, Executors, and Administrators, jointly and severally, by these Presents.

Sealed with our seals, and dated the 1st day of August in the year of our Lord one thousand nine hundred and twenty-one.

Whereas lately at a sitting of the Supreme Judicial Court of Massachusetts, holden at Worcester within and for the County of Worcester, in a suit depending in said court between William W. Knights, plaintiff, and said James Jackson, defendant, on a petition for writ of mandamus judgment was rendered against the said William W. Knights dismissing his said petitioner, and the said William W. Knights having procured a writ of error and filed a copy thereof in the clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said James Jackson citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said William W. Knights shall prosecute his said writ of error to effect,
3 and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void, otherwise to remain in full force and virtue.

WILLIAM W. KNIGHTS. [L. S.]
UNITED STATES FIDELITY & GUARANTY CO.
D. R. PENNELL,
WM. L. BURT,
True and Lawful Attorneys. [L. S.]

Aug. 4, 1921.

This bond is approved.
ARTHUR P. RUGG,
Chief Justice Supreme
Judicial Court of Massachusetts.

(Endorsed:) Approved by Arthur P. Rugg, Chief Justice, and Filed August 4th, 1921. Attest: T. S. Johnson, Clerk.

A true copy of said bond, &c.
Attest:
T. S. JOHNSON,
Clerk.

4 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

To all persons to whom these presents shall come, Greeting:

Know ye that among the records of our supreme judicial court, begun and holden at Worcester, within and for our said county of Worcester, on the second Tuesday of April, being the thirteenth day of said month, in the year of our Lord one thousand nine hundred and twenty, it is thus contained: the following being the entire record of the case.

5 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

WILLIAM W. KNIGHTS, of Hopedale, in the County of Worcester,

vs.

FRED J. BURRELL, as He Is Treasurer and Receiver General of the Commonwealth of Massachusetts.

Petition for Writ of Mandamus.

Respectfully represents your petitioner:

1. That he is a taxable inhabitant of the Town of Hopedale in the County of Worcester and Commonwealth of Massachusetts.

2. That section 2 of Chapter 269 of the General Acts of 1916 as amended by Chapters 7 and 120 of the General Acts of 1918 provides as follows:—

"Income of the following classes received by any inhabitant of this commonwealth during the calendar year prior to the assessment of the tax shall be taxed at the rate of six per cent per annum:

(*a*) Interest from bonds, notes, money at interest and all debts due the person to be taxed, except from:

First. Deposits in any savings bank chartered by this commonwealth or in the Massachusetts Hospital Life Insurance Company, or such of the deposits in the savings department of any trust company so chartered as do not exceed in amount the limits imposed upon deposits in savings banks by section forty-six of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, and acts in amendment thereof and in addition thereto, and deposits in any bank situated in the state of New Hampshire, so long as the provisions of chapter one hundred and eighty-nine of the Public Acts of nineteen hundred and seventeen of that state remain in force, and deposits in any bank in any other state which exempts from taxation to its inhabitants similar deposits, and interest and dividends thereon, owned by such inhabitants in banks in this commonwealth.

Second. Bonds of the United States and such bonds, notes and certificates of indebtedness of the commonwealth and of political sub-divisions thereof as are exempt from taxation under the provisions of clause fifteen of section five of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto.

Third. Loans secured exclusively by mortgages of real estate, taxable as real estate, situated within the commonwealth, to an amount not exceeding the assessed value of the mortgaged real estate.

6 (*b*) Dividends on shares in all corporations and joint stock companies organized under the laws of any state or nation other than this commonwealth, except national banks and except such foreign corporations as are subject to a tax under their franchises payable to this commonwealth under the provisions of sections forty-three and fifty-two of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto.

(*c*) Dividends on shares in partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, except dividends on shares of the following:

First. Partnerships, associations or trusts, which file with the tax commissioner the agreement hereinafter provided for, and the property of which consists exclusively of one or more of the following specified kinds of property, to wit:—real estate wherever situated and supplies therefor and receipts therefrom; stocks of corporations taxable under the provisions of sections forty-three and fifty-two of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto; bonds, notes, loans secured by mortgage of real estate, and certificates of indebtedness, the income of which is exempt from taxation under the provisions of this section; property the income of which, if any, would be taxable under this section if owned by an inhabitant of the commonwealth; shares in partnerships,

associations or trusts, dividends on which are exempt from taxation under this section.

Second. Partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, which file such agreement and furnish satisfactory proof to the tax commissioner that two thirds, at least, of their taxable property is taxed within the commonwealth and that the remainder, if taxable, is taxed where it is situated,

Partnerships, associations or trusts, the dividends on shares of which are exempt from taxation under this section, shall pay to the tax commissioner annually a tax of six per cent of the income derived from any property owned by such partnerships, associations or trusts, so far as such income would be taxable under this section if received by an inhabitant of the commonwealth."

(3) That section 5, subsection (*b*), of said chapter 269 of the General Acts of 1916 provides as follows:

"The excess over two thousand dollars of the income, as defined in section six, derived from professions, employments, trade or business, shall be taxed at the rate of one and one-half per cent per annum. In determining such income the rental value of living quarters furnished any individual as part of his compensation shall be included. The wages and salaries of employees and officers of the United States government shall not be taxed; but if such employees and officers receive other income taxable under this section, that part of such other income shall be taxed which, when such other income is added to the amount of the wages or salary received as an employee or officer of the United States government, shall be in excess of two thousand dollars."

7 (4) That Section 1 of Chapter 324 of the General Acts of 1919 provides as follows:

"There is hereby imposed, in addition to the income taxes levied under the provisions of chapter two hundred and sixty-nine of the General Acts of nineteen hundred and sixteen, and all acts in amendment thereof and in addition thereto, an additional tax of one per cent on all income received during the calendar years nineteen hundred and eighteen and nineteen hundred and nineteen, taxable under the provisions of paragraph (*b*) of section five of the said chapter. All provisions of law relative to the assessment, payment, collection and abatement of the said income taxes shall apply to the additional tax imposed by this act."

(5) That the petitioner is the owner of certain personal property the income of which is subject to taxation under said Section 2 of Chapter 269 of the General Acts of 1916 amended as aforesaid, and during the year 1919 was in receipt of certain income subject to taxation under said section 5, subsection (*b*) of said chapter and under said chapter 324 of the General Acts of 1919; that he has filed with the Commissioner of Corporations and Taxation a return

of his income subject to taxation as aforesaid for the year 1919, and said Commissioner is about to assess a tax thereon in accordance with said Chapter and to collect the same, and to turn over the money so collected to the respondent herein, in accordance with the provisions of Section 17 of said Chapter 269 of the General Acts of 1916.

(6) That Chapter 363 of the General Acts of 1919 provides in substance that the respondent shall on or before the fifteenth day of November in each year turn over to the several cities and towns of the commonwealth from the amount raised by taxation under the provisions of said Chapter 269 of the General Acts of 1916 a sufficient amount to reimburse said cities and towns for expenditures for salaries of teachers, supervisors, principals, assistant superintendents and superintendents of schools in accordance with certain requirements contained therein; and the petitioner is informed and believes that the sum so required will amount to several million dollars.

(7) That the respondent, acting under supposed authority of said Chapter 363 of the General Acts of 1919 is about to and
8 will unless restrained by this Honorable Court turn over to divers cities and towns of the Commonwealth a large portion of the money so raised by the taxation of the personal property of the petitioner, as a reimbursement for the expenditures of said cities and towns for salaries as hereinbefore set forth.

(8) That neither the petitioner nor his property derives any special and peculiar benefit from the expenditures authorized by Chapter 363 of the General Acts of 1919 or any benefit other than the benefit which all citizens of the commonwealth and all property therein derive therefrom.

(9) That as a result of the legislation hereinbefore set forth a tax is levied upon a certain limited class of property and upon certain limited classes of incomes, for a particular public purpose which confers no benefit upon and bears no relation to the property and incomes assessed; and that such property and incomes also bear their share of the general expenses of government; while real estate, tangible personal property, and the income therefrom, the franchises of corporations and other taxable property and the income therefrom are not taxed for the expenditures authorized by said Chapter 363 of the General Acts of 1919.

(10) That the taxes imposed by said Chapter 269 of the General Acts of 1916 and by said Chapter 324 of the General Acts of 1919 are state taxes assessed by the officers of the commonwealth and paid into the treasury thereof and the expenditures authorized by Chapter 363 of the General Acts of 1919 are expenditures of the commonwealth to be made for the necessary defense and support of the commonwealth and for the protection and preservation of the inhabitants thereof; but said proposed expenditures and the taxes by which they are to be defrayed were not included in the budget, or in any supplementary budget recommended by the governor or in any general or special appropriation bill during the year 1920.

9 (11) That said Chapter 363 of the General Acts of 1919 is unconstitutional and void for the following reasons:

(*a*) It imposes one of the public charges of government upon the inhabitants of the commonwealth in an unequal and disproportionate manner and without regard to their estates or their income from all sources or their ability to pay, but in proportion to their income from certain particular sources only, in violation of Part II, Chapter 1, Section 1, Article IV of the Constitution of Massachusetts and of Article XIV of the Amendments to the Constitution of the United States.

(*b*) It imposes one of the public charges of government which ought properly to be assessed on all property within the commonwealth with some degree of equality upon a particular class of property only, in violation of Part II, Chapter 1, Section 1, Article IV of the Constitution of Massachusetts and of Article XIV of the Amendments to the Constitution of the United States.

(*c*) It requires the petitioner to pay, in addition to his general tax for state purposes which he pays equally with others, a special assessment for a particular public purpose imposed upon a certain limited class of property which is not founded on benefits to the property from the expenditure of the money so raised; and the expenditure confers no benefit upon him or upon his property which is not shared by the inhabitants of the commonwealth generally; and the assessment upon his property is in fact greatly in excess of the benefits received, so that his entire tax is excessive, unreasonable and disproportional in violation of Part II, Chapter 1, Section 1, Article IV of the Constitution of Massachusetts; his property is appropriated to public uses in violation of Article X of the Declaration of Rights in the Constitution of Massachusetts; and he is deprived of his property without due process of law and is denied the equal protection of the laws, in violation of Article XIV of the Amendments to the Constitution of the United States.

10 (12) That the proposed expenditure of money raised by taxes imposed by Chapter 269 of the General Acts of 1916 and by Chapter 324 of the General Acts of 1919 in accordance with the provisions of Chapter 363 of the General Acts of 1919 is in violation of Article LXIII of the Amendments to the Constitution of Massachusetts in that said proposed expenditure and the taxes by which it is to be defrayed were not included in the budget, or in any supplementary budget recommended by the governor, or in any general or special appropriation bill during the year 1920.

(13) That the ordinary remedy of petition for the abatement of so much of said tax as is applicable to said unlawful and unconstitutional purpose is not available to your petitioner, since provision is made by law for the distribution for general municipal purposes of so much of the taxes raised by said Chapter 269 of the General Acts of 1916 as is not required by said Chapter 363 of the General Acts of 1919 and if said Chapter 363 should be held unconstitutional

petitioner would not be entitled to an abatement of any portion of his tax, so that his only remedy is by petition for mandamus.

Wherefore your petitioner prays that this Honorable Court will issue its writ of mandamus in favor of your petitioner, directed to the respondent commanding him not to distribute or pay over in accordance with the provisions of Chapter 363 of the General Acts of 1919 any portion of the tax for the year 1920 raised from the petitioner under the provisions of Chapter 269 of the General Acts of 1916 or of Chapter 324 of the General Acts of 1919.

By His Attorney, PHILIP NICHOLS.

11 SUFFOLK, *ss:*

On the fourteenth day of July, 1920, before me personally appeared the above-named William W. Knights and made oath that the matters alleged in the foregoing are true, except as to matters therein stated to be on information and belief, and that as to these matters he believes them to be true.

PHILIP NICHOLS,
Notary Public.

My commission expires Mar. 6, 1925.

Filed July 21st, 1920.
Attest:
T. S. JOHNSON,
Clerk.

July 21, 1920.

Let order of notice issue in usual form returnable before the court in Boston at half past nine o'clock in the forenoon of Tuesday Aug. 3, 1920.

ARTHUR P. RUGG,
Chief Justice.

COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

July 21st, A. D. 1920.

On the Petition aforesaid, it is Ordered, That the Petitioner notify the said Fred J. Burrell, Treasurer and Receiver-General of the Commonwealth of Massachusetts, to appear at this Court, at Boston, in the County of Suffolk, on Tuesday, the twenty-third day of August next, at half past nine of the clock in the forenoon, by serving him with an attested copy of said Petition and this order forthwith, that he may, then and there, shew cause why the prayer of said Petition should not be granted.

Attest: T. S. JOHNSON,
Clerk.

July 29, 1920.

Service of the within petition is accepted for the Treasurer and Receiver-General.

J. WESTON ALLEN,
Attorney-General.

12 (Endorsed:) 989 Commonwealth of Massachusetts Supreme Judicial Court Worcester ss. William W. Knights of Hopedale in the County of Worcester vs. Fred J. Burrell, as he is Treasurer and Receiver General of the Commonwealth of Massachusetts. Petition for Writ of Mandamus. Filed July 21st 1920. Attest. T. S. Johnson, Clerk. July 21, 1920. Let order of notice issue in usual form returnable before the court in Boston at half past nine o'clock in the forenoon of Tuesday Aug. 3, 1920. Arthur P. Rugg, Chief Justice.

13 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

WILLIAM W. KNIGHTS, of Hopedale, in the County of Worcester,

v.

FRED J. BURRELL, as He Is Treasurer and Receiver-General of the Commonwealth of Massachusetts.

Demurrer.

Now comes Fred J. Burrell, Treasurer and Receiver-General of the Commonwealth of Massachusetts, and demurs to said petition upon the following grounds:

1. Petitioner seeks to restrain, not compel, official action, and petition for a writ of mandamus is therefore not a proper remedy.

2. If petitioner has a right to have respondent restrained from performing the duty imposed upon him by chapter 363 of the General Acts of 1919, his proper remedy is by bill in equity praying that respondent be enjoined from performing said duty.

3. Petitioner does not allege any individual right in himself which would be enforced or vindicated by a writ of mandamus.

14 4. Petitioner does not allege that respondent owes any duty to him individually which should be enforced by a writ of mandamus.

5. The petition purports to seek the enforcement of the constitution of the Commonwealth and the constitution of the United States, and therefore should be filed by the Attorney-General in behalf of all the inhabitants of the Commonwealth.

6. The petition does not allege that respondent has failed to perform or has refused to perform any ministerial duty imposed upon him by law.

7. The petition does not allege that respondent has failed to exercise or has refused to exercise his discretion in any matter with respect to which the law imposes upon him a duty to exercise discretion.

8. It does not appear from the petition that sections 19 and 20 of chapter 269 of the General Acts of 1916 do not provide the petitioner with adequate remedies.

9. The petition seeks only that the respondent be commanded not to pay over, as provided by chapter 363 of the General Acts of 1919, a small fraction of the money collected pursuant to the provisions of chapter 269 of the General Acts of 1916. The issue of the writ would therefore be of no advantage to the petitioner and would inconvenience the respondent in the performance of his duties, and the petition does not commend itself to the sound discretion of this Court.

10. Chapter 363 of the General Acts of 1919 is in all respects constitutional and valid.

FRED J. BURRELL,
Treasurer and Receiver-General,
By MAYNARD C. TEALL,
Assistant Attorney-General.

I hereby certify that in my opinion the foregoing demurrer presents a proper subject for judicial inquiry and is not filed for the purposes of delay.

MAYNARD C. TEALL,
Assistant Attorney-General.

(Endorsed:) No. 989. William W. Knights, v. Fred J. Burrell, Treasurer and Receiver-General. Demurrer. Suffolk, S. S. Supreme Judicial Court. Filed Aug. 24, 1920. John F. Cronin, Clerk.

15 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

WILLIAM W. KNIGHTS
vs.
TREASURER and RECEIVER-GENERAL (FRED J. BURRELL).

Reservation.

This case is reserved upon the petition and demurrer for the determination of the Full Court.

HENRY K. BRALEY, *J. S. J. C.*

Aug. 25, 1920.

(Endorsed:) 989. Commonwealth of Massachusetts. Worcester, ss. Supreme Judicial Court. William W. Knights vs. Treasurer and Receiver-General (Fred J. Burrel) Reservation. Filed August 25th, 1920. Attest. T. S. Johnson, Clerk.

16 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, October 13, 1920.

In the Case of

WILLIAM W. KNIGHTS

vs.

FRED J. BURRELL as He Is Treasurer and Receiver General.

Pending in the Supreme Judicial Court for the County of Worcester.

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,
Petition to abate.
Motion to amend denied.

By the Court.

C. H. COOPER,
Clerk.

October 13, 1920.

Brief Statement of the Grounds and Reasons of the Decision.

The reasons of the decision are set forth at length in the opinion filed herewith, to which reference is made.

(Endorsed:) 989. No. 15 Supreme Judicial Court for the Commonwealth. Rescript, Worcester County. William W. Knights vs. Fred J. Burrell as he is Treasurer and Receiver General. Filed October 15th, 1920. Attest. T. S. Johnson, Clerk.

17 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

No. —.

WILLIAM W. KNIGHTS

vs.

JAMES JACKSON, Treasurer & Receiver-General.

Motion for Judgment.

Now comes the petitioner in the above entitled case and moves for the entry of judgment in accordance with the rescript.

By His Attorney, PHILIP NICHOLS.

(Endorsed:) 989. Commonwealth of Massachusetts Worcester, ss. Supreme Judicial Court. William W. Knights vs. James Jackson, Treas. #Rec'r. Gen'l. August 1st, 1921. Allowed. Attest. T. S. Johnson, Clerk. Filed Aug. 5th. 1921 as of Aug. 1, 1921. Attest. John H. Flynn Asst. Clerk, S. J. C.

18 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

No. —.

WILLIAM W. KNIGHTS

vs.

JAMES JACKSON, Treasurer & Receiver-General.

Judgment.

This case came on to be heard at this sitting upon the petitioner's motion for judgment in acordance with the rescript, and thereupon it is ordered that the petition be and the same is hereby dismissed.

By the court sitting in Boston.

JOHN H. FLYNN,
Ass't Clerk.

Aug. 1, 1921.

(Endorsed:) 989. Commonwealth of Massachusetts Worcester, ss. Supreme Judicial Court. William W. Knights vs. James Jackson, Treas. & Rec'r. Gen'l. Let this judgment be entered as of the first day of August 1921. Arthur P. Rugg, Chief Justice. Filed August 1st, 1921. Attest. T. S. Johnson, Clerk.

19 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

No. —.

WILLIAM W. KNIGHTS

vs.

JAMES JACKSON, Treasurer and Receiver-General

Petition for Writ of Error and Assignment of Errors.

Your petitioner, William W. Knights, plaintiff in the above entitled proceeding, represents that errors of law appear in the record in this case.

That the plaintiff is a resident of the Commonwealth of Massachusetts and is the owner of certain intangible personal property subject to taxation under Section 2 of Chapter 269 of the General Acts of the year 1916 of the General Court of Massachusetts, and is in receipt of certain income from professions, employments, trade or business taxable under Section 5, Paragraph (*b*) of said Chapter; that said Chapter 269 does not tax all property and all incomes within the commonwealth but only certain limited classes of property and certain limited classes of income, and the remaining property within the commonwealth is taxed under other statutes; that by virtue of the provisions of Chapter 363 of the General Acts of the year 1919 of the General Court of Massachusetts, a large sum amounting to several million dollars is to be taken from the proceeds of the tax levied in accordance with said Chapter 269 of the General Acts of 1916 and devoted to a particular public purpose, namely the reimbursement of cities and towns in said commonwealth for expenditures in the payment of salaries of teachers and other officers in the public schools; and that by Section 1 of Chapter 324 of the General Acts of 1919 of the General Court of Massachusetts, an additional tax was levied on
20 all income taxable under Section 5 Paragraph (*b*) of said Chapter 269; that neither the plaintiff nor his property derives any special and peculiar benefit from the expenditures authorized by said Chapter 363 of the General Acts of 1919; and that as a result of said legislation a special assessment is levied upon a certain limited class of property and upon certain limited classes of income which confers no benefit upon and bears no relation to the property and income assessed.

That all the Federal questions hereinafter set forth in the assignment of errors were duly raised in the trial court and were duly carried to the highest court of the Commonwealth of Massachusetts, to wit the Supreme Judicial Court of the Commonwealth and there decided adversely to the plaintiff's contentions and adversely to the existence of the Federal rights claimed.

Wherefore, he respectfully petitions for a writ of error to the Supreme Judicial Court sitting at Worcester within and for the County of Worcester and Commonwealth of Massachusetts, and files herewith his assignment of errors as follows, to wit:

(1) The Court erred in deciding that the provisions of Chapter 363 of the General Acts of 1919 imposing one of the public charges of government upon the inhabitants of the Commonwealth in proportion to their income from certain particular sources only were not in violation of the Fourteenth Amendment to the Constitution of the United States as denying to the plaintiff the equal protection of the laws.

(2) The Court erred in deciding that the provisions of Chapter 363 of the General Acts of 1919 imposing upon the plaintiff and his property and his income an assessment which was not imposed upon all persons and all property and all incomes subject to taxation within the commonwealth, which assessment was levied to raise funds for a particular public purpose which conferred no benefit upon him or upon his property which was not shared by the inhabitants of the commonwealth generally, were not in violation of the Fourteenth Amendment to the Constitution of the United States as depriving the plaintiff of his property without due process of
21 law and as denying to the plaintiff the equal protection of the laws.

WILLIAM W. KNIGHTS,
By His Attorney, PHILIP NICHOLS.

(Endorsed:) Commonwealth of Massachusetts. Worcester, ss. No. —. Supreme Judicial Court. William W. Knights vs. James Jackson, Treasurer and Receiver General. Petition for Writ of Error and Assignment of Errors. Filed August 4th, 1921. Attest, T. S. Johnson, Clerk.

21½ COMMONWEALTH OF MASSACHUSETTS:

Boston, August 11, 1921.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of William W. Knights vs. Treasurer & Receiver General, decided on the 2nd day of March, 1921.

ETHELBERT V. GRABILL,
Reporter of Decisions.

ETHELBERT V. GRABILL.

22 RUGG, *C. J.*:

The petitioner seeks by this petition for a writ of mandamus to test the constitutionality of certain statutes respecting the assessment and distribution of the income tax. As the case has been argued at large and as the petitioner fails to make out a case, the question of the form of remedy has not been considered. The disposition of the case will be the same in any event and therefore there appears to be

no objection to stating the grounds of substantive law which lead to that result. Browne v. Turner, 176 Mass. 9, 12.

The material allegations of the petition, briefly stated, are that the petitioner, an inhabitant of the Commonwealth, is taxable for two classes of income made subject to taxation by the income tax law, St. 1916, c. 269, s. s. 2 and 5 cl. (*b*), as amended; that by St. 1919, c. 324, a tax of one per cent for the year 1919 is imposed in addition to the one and one half per cent already theretofore imposed on the income described in said s. 5 cl. (*b*); that by St. 1919, c. 363, the Treasurer and Receiver General is required to turn over to the several cities and towns of the Commonwealth from the income
23 tax received under said c. 269 and its amendments a sum sufficient to reimburse them for certain expenditures for the support of public schools according to specifications there set forth. The petitoner contends that his property thus will be taken from him without due process of law and that he is subject to unequal taxation, and that in other respects his constitutional rights are infringed. The respondent demurred. The case was reserved for the decision of the full court.

The tax thus described in the petition is not a betterment tax. It rests upon the right of government to collect revenue sufficient for its support. It does not depend in any degree upon a special or peculiar benefit conferred upon anybody. The only and sufficient return which the taxpayer gets from taxes of that kind is the advantage and protection of orderly government. The additional income tax authorized by said c. 324 is a general tax. Illinois Central Railroad v. Decatur, 147 U. S. 190, 197, 198. It is not levied upon all the property in the Commonwealth. But it is levied on all income of a particular class. All the moneys levied under said c. 324 are paid into the State treasury, as are other income taxes. All are commingled.

The general income tax law has been held to be constitutional. By art. 44 of the Amendments to the Massachusetts Constitution the General Court is given power to levy taxes at different rates upon incomes derived from different classes of property, but at a uniform rate upon income from the same class of property. It
24 cannot be doubted that this confers power to change the rate of the tax from time to time as the public welfare may require. The rates first established are not immutable. Under this amendment plainly income taxes are not required to be proportional or equal as between different validly established classes. They need only be reasonable and uniform, if otherwise in conformity to the Constitution. The contention of the petitioner that his tax is unequal and disproportionate is answered by the terms of the Forty-fourth Amendment, which as to income permits precisely that kind of taxation, provided it is reasonable and uniform. For that reason a considerable portion of the ground of decision in Sears v. Street Commissioners, 173 Mass. 350, is not relevant to an income tax under the Forty-fourth Amendment adopted long after that decision. All other property taxes except those upon income must be proportional under c. 1, s. 1, art. of the Constitution. Tax Com-

missioner v. Putnam, 227 Mass. 522. The statute here assailed levies a uniform tax upon income derived from the same class of property. It cannot be pronounced unreasonable.

It is elementary that taxes can be levied only for public purposes. Clearly popular education is a public purpose. The power of the Commonwealth to levy a tax or to appropriate public money for the support of the public schools in indubitable. Hill v. Boston, 122 Mass. 344.

25 The distribution of public moneys in way of expenditures either directly by State officers or indirectly through county, city, town, or district officers need not be according to any principle of apportionment or equality other than such as commends itself to the wisdom of the General Court. Lowell v. Oliver, 8 Allen, 247, 255. Duffy v. Treasurer & Receiver General, 234 Mass. 42.

This record does not present a case of an additional tax rate upon a particular class of income, the proceeds of which are specifically appropriated to a definite purpose. The averment in the petition, that "as a result of the legislation hereinbefore set forth a tax is levied upon a certain limited class of property and upon certain limited classes of incomes, for a particular public purpose," when read in the light of the statutes themselves and limited as it must be by their terms, falls far short of such a case. As shown by the statute, it is a simple case of additional general revenue to meet additional general expenses of government.

The fact that the distribution of public money to the several cities and towns for public uses under said St. 1919, c. 363, was not included in the budget contravenes no provision of art. 63 of the Amendments to the Constitution requiring a State budget. Dane v. Treasurer & Receiver General, ante, 50.

Petition dismissed.

25½ [Endorsed:] Knights vs. Treas. & Rec. Gen. Certified copy of the Opinion of the Supreme Judicial Court.

26 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to James Jackson, of Westwood in the County of Norfolk and Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the* twenty-ninth day of August next, pursuant to a Writ of Error filed in the Clerk's Office of the† Supreme Judicial Court within and for the County of Worcester and Commonwealth of Massachusetts wherein William W. Knights of Hopedale in the County of Worcester and Commonwealth of Massachusetts is plaintiff in error, and you are defendant in error, to show cause, if any there be,

*Not exceeding 30 days from the day of signing.
†Name of Court to which Writ of Error is directed.

why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur P. Rugg, Chief Justice Supreme Judicial Court of the Commonwealth of Massachusetts this fourth day of August, in the year of our Lord one thousand nine hundred and twenty one.

[SEAL.]

ARTHUR P. RUGG,
Chief Justice of the Supreme Judicial Court of Massachusetts.

Service of the within citation is accepted.

J. WESTON ALLEN,
Attorney General.

27 COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

Supreme Judicial Court.

I, Theodore S. Johnson, clerk of the supreme judicial court, within and for the county of Worcester, hereby certify that the foregoing are true copies of

I. The record in the case of William W. Knights vs. James Jackson, Treasurer and Receiver-General on a petition for a writ of mandamus in said supreme judicial court, determined and annexed to and transmitted with said record, of

II. The application for writ of error and the assignment of errors.

III. The opinion of the full court and of all the proceedings in said case, with all things concerning the same, together with

IV. The original citation and the acceptance of service thereon.

In witness whereof I have hereto set my hand and the seal of said court, this twenty-third day of August, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

T. S. JOHNSON,
Clerk.

Endorsed on cover: File No. 28,473. Massachusetts Supreme Judicial Court. Term No. 518. William W. Knights, plaintiff in error, vs. James Jackson, treasurer and receiver general. Filed September 7th, 1921. File No. 28,473.

Supreme Court of the United States.

October Term, 1922.

No. 167.

WILLIAM W. KNIGHTS,
PLAINTIFF IN ERROR,

v.

JAMES JACKSON, TREASURER AND RECEIVER GENERAL OF MASSACHUSETTS.

Motion to Amend Transcript of Record.

PHILIP NICHOLS,
Attorney for Plaintiff in Error.

ANDREW J. PETERSEN & SON, LAW PRINTERS, BOSTON.

Supreme Court of the United States.

October Term, 1922.

No. 167.

WILLIAM W. KNIGHTS,
PLAINTIFF IN ERROR,

v.

JAMES JACKSON, TREASURER AND RECEIVER GENERAL OF MASSACHUSETTS.

MOTION TO AMEND TRANSCRIPT OF RECORD.

And now comes the plaintiff in error in the above-entitled cause, and moves that the transcript of record be amended in accordance with the following stipulation.

PHILIP NICHOLS,
Attorney for Plaintiff in Error.

The defendant in error waives notice of the presentation to the court of the foregoing motion, and joins in urging that it be allowed.

J. WESTON ALLEN,
Attorney General,
Attorney for Defendant in Error.

STIPULATION.

In the case of *William W. Knights, Plaintiff in Error* v. *James Jackson, Treasurer and Receiver General of Massachusetts,* Supreme Court of the United States, October Term, 1922, No. 167, it is stipulated and agreed that the record in the foregoing case be amended and corrected in accordance with the certificate of the clerk of the Supreme Judicial Court of the County of Worcester and Commonwealth of Massachusetts, hereto annexed.

PHILIP NICHOLS,
Attorney for Plaintiff in Error.
J. WESTON ALLEN,
Attorney General,
Attorney for Defendant in Error.

COMMONWEALTH OF MASSACHUSETTS.
SUPREME JUDICIAL COURT.
WORCESTER ss.

WILLIAM W. KNIGHTS, of Hopedale in the County of Worcester,

v.

JAMES JACKSON, as he is Treasurer and Receiver General of the Commonwealth of Massachusetts.

PETITION FOR WRIT OF MANDAMUS.

Respectfully represents your petitioner

(1) That he is a taxable inhabitant of the Town of Hopedale in the County of Worcester and Commonwealth of Massachusetts.

(2) That Section 2 of Chapter 269 of the General Acts of 1916 as amended by Chapters 7 and 120 of the General Acts of 1918 provides as follows:—

"Income of the following classes received by any inhabitant of this commonwealth during the calendar year prior to the assessment of the tax shall be taxed at the rate of six per cent per annum:

(a) Interest from bonds, notes, money at interest and all debts due the person to be taxed, except from:

First: Deposits in any savings bank chartered by this commonwealth or in the Massachusetts Hospital Life Insurance Company, or such of the deposits in the savings department of any trust company so chartered as do not exceed in amount the limits imposed upon deposits in savings banks by section forty-six of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, and acts in amendment thereof and in addition thereto, and deposits in any bank situated in the state of New Hampshire, so long as the provisions of chapter one hundred eighty-nine of the Public Acts of nineteen hundred and seventeen of that state remain in force, and deposits in any bank in any other state which exempts from taxation to its inhabitants similar deposits and interest and dividends thereon, owned by such inhabitants in banks in this commonwealth.

Second: Bonds of the United States and such bonds, notes and certificates of indebtedness of the commonwealth and of political subdivisions

thereof as are exempt from taxation under the provisions of clause fifteen of section five of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto.

Third: Loans secured exclusively by mortgages of real estate, taxable as real estate, situated within the commonwealth, to an amount not exceeding the assessed value of the mortgaged real estate.

(b) Dividends on shares in all corporations and joint stock companies organized under the laws of any state or nation other than this commonwealth, except national banks and except such foreign corporations as are subject to a tax upon their franchises payable to this commonwealth under the provisions of sections forty-three and fifty-two of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto.

(c) Dividends on shares in partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, except dividends on shares of the following:—

First: Partnerships, associations or trusts, which file with the tax commissioner the agreement hereinafter provided for, and the property of which consists exclusively of one or more of the following specified kinds of property, to wit:—real estate wherever situated and supplies therefor and receipts therefrom; stocks of corporations taxable under the provisions of sections forty-three and fifty-two of Part III of chapter four hundred and ninety of the acts of the year nine-

teen hundred and nine and acts in amendment thereof and in addition thereto; bonds, notes, loans secured by mortgage of real estate, and certificates of indebtedness, the income of which is exempt from taxation under the provisions of this section; property the income of which, if any would be taxable under this section if owned by an inhabitant of the commonwealth; shares in partnerships, associations or trusts, dividends on which are exempt from taxation under this section.

Second: Partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, which file such agreement and furnish satisfactory proof to the tax commissioner that two thirds, at least, of their taxable property is taxed within the commonwealth and that the remainder, if taxable, is taxed where it is situated.

Partnerships, associations or trusts, the dividends on shares of which are exempt from taxation under this section shall pay to the tax commissioner annually a tax of six per cent of the income derived from any property owned by such partnerships, associations or trusts, so far as such income would be taxable under this section if received by an inhabitant of the commonwealth."

(3) That Section 5, Subsection (b), of said Chapter 269 of the General Acts of 1916 provides as follows:

"The excess over two thousand dollars of the income, as defined in section six, derived from professions, employments, trade or business shall be taxed at the rate of one and one-half per cent

per annum. In determining such income the rental value of living quarters furnished any individual as part of his compensation shall be included. The wages and salaries of employees and officers of the United States government shall not be taxed; but if such employees and officers receive other income taxable under this section, that part of such other income shall be taxed which, when such other income is added to the amount of the wages or salary received as an employee or officer of the United States government, shall be in excess of two thousand dollars."

(4) That Section 1 of Chapter 324 of the General Acts of 1919 provides as follows:

"There is hereby imposed, in addition to the income taxes levied under the provisions of chapter two hundred and sixty-nine of the General Acts of nineteen hundred and sixteen, and all acts in amendment thereof and in addition thereto, an additional tax of one per cent on all income received during the calendar years nineteen hundred and eighteen and nineteen hundred and nineteen, taxable under the provisions of paragraph (b) of section five of the said chapter. All provisions of law relative to the assessment, payment, collection and abatement of the said income taxes shall apply to the additional tax imposed by this act."

(5) That the petitioner is the owner of certain personal property the income of which is subject to taxation under said Section 2 of Chapter 269 of the General Acts of 1916 amended as aforesaid, and during the year 1919 was in receipt of certain income subject to

taxation under said Section 5, Subsection (b) of said chapter and under said Chapter 324 of the General Acts of 1919; that he has filed with the Commissioner of Corporations and Taxation a return of his income subject to taxation as aforesaid for the year 1919, and said Commissioner has assessed a tax thereon in accordance with said chapter and collected the same and is about to turn over the money so collected to the respondent herein, in accordance with the provisions of Section 17 of said Chapter 269 of the General Acts of 1916. That the petitioner has derived income during the year 1920 in the same manner and from the same sources as hereinbefore set forth and that the Commissioner of Corporations and Taxation is intending to and will during the year 1921 assess a tax on said property and on said income in accordance with said Chapter 269 of the General Acts of 1916, and is intending to and will turn over the money so raised to the respondent herein in accordance with the provisions of Section 17 of said Chapter.

(6) That Chapter 363 of the General Acts of 1919 provides in substance that the respondent shall on or before the fifteenth day of November in each year turn over to the several cities and towns of the commonwealth from the amount raised by taxation under the provisions of said Chapter 269 of the General Acts of 1916 a sufficient amount to reimburse said cities and towns for expenditures for salaries of teachers, supervisors, principals, assistant superintendents and superintendents of schools in accordance with certain requirements contained therein; and the petitioner is informed and believes that the sum so required will amount to several million dollars.

(7) That the respondent, acting under supposed authority of said Chapter 363 of the General Acts of 1919 is about to and will unless restrained by this Honorable Court turn over to divers cities and towns of the Commonwealth a large portion of the money so raised by the taxation of the personal property of the petitioner, as a reimbursement for the expenditures of said cities and towns for salaries as hereinbefore set forth.

(8) That neither the petitioner nor his property derives any special and peculiar benefit from the expenditures authorized by Chapter 363 of the General Acts of 1919 or any benefit other than the benefit which all citizens of the commonwealth and all property therein derive therefrom.

(9) That as a result of the legislation hereinbefore set forth a tax is levied upon a certain limited class of property and upon certain limited classes of incomes, for a particular public purpose which confers no benefit upon and bears no relation to the property and incomes assessed; and that such property and incomes also bear their share of the general expenses of government; while real estate, tangible personal property, and the income therefrom, the franchises of corporations and other taxable property and the income therefrom are not taxed for the expenditures authorized by said Chapter 363 of the General Acts of 1919.

(10) That the taxes imposed by said Chapter 269 of the General Acts of 1916 and by said Chapter 324 of the General Acts of 1919 are state taxes assessed by the officers of the commonwealth and paid into the treasury thereof and the expenditures authorized by Chapter 363 of the General Acts of 1919 are expenditures of the commonwealth to be made for the neces-

sary defense and support of the commonwealth and for the protection and preservation of the inhabitants thereof; but said proposed expenditures and the taxes by which they are to be defrayed were not included in the budget, or in any supplementary budget recommended by the governor or in any general or special appropriation bill during the year 1920.

(11) That said Chapter 363 of the General Acts of 1919 is unconstitutional and void for the following reasons:—

(a) It imposes one of the public charges of government upon the inhabitants of the commonwealth in an unequal and disproportionate manner and without regard to their estates or their income from all sources or their ability to pay, but in proportion to their income from certain particular sources only, in violation of Part II, Chapter 1, Section 1, Article IV of the Constitution of Massachusetts and of Article XIV of the Amendments to the Constitution of the United States.

(b) It imposes one of the public charges of government which ought properly to be assessed on all property within the commonwealth with some degree of equality upon a particular class of property only, in violation of Part II, Chapter 1, Section 1, Article IV of the Constitution of Massachusetts and of Article XIV of the Amendments to the Constitution of the United States.

(c) It requires the petitioner to pay, in addition to his general tax for state purposes which he pays equally with others, a special assessment for a particular public purpose imposed upon a certain limited class of property which is not

founded on benefits to the property from the expenditure of the money so raised; and the expenditure confers no benefit upon him or upon his property which is not shared by the inhabitants of the commonwealth generally; and the assessment upon his property is in fact greatly in excess of the benefits received, so that his entire tax is excessive, unreasonable and disproportional in violation of Part II, Chapter 1, Section 1, Article IV of the Constitution of Massachusetts; his property is appropriated to public uses in violation of Article X of the Declaration of Rights in the Constitution of Massachusetts; and he is deprived of his property without due process of law and is denied the equal protection of the laws, in violation of Article XIV of the Amendments to the Constitution of the United States.

(12) That the proposed expenditure of money raised by taxes imposed by Chapter 269 of the General Acts of 1916 and by Chapter 324 of the General Acts of 1919, in accordance with the provisions of Chapter 363 of the General Acts of 1919 is in violation of Article LXIII of the Amendments to the Constitution of Massachusetts in that said proposed expenditure and the taxes by which it is to be defrayed were not included in the budget, or in any supplementary budget recommended by the governor, or in any general or special appropriation bill during the year 1920.

(13) That the ordinary remedy of petition for the abatement of so much of said tax as is applicable to said unlawful and unconstitutional purpose is not available to your petitioner, since provision is made by law for the distribution for general municipal pur-

poses of so much of the taxes raised by said Chapter 269 of the General Acts of 1916 as is not required by said Chapter 363 of the General Acts of 1919 and if said Chapter 363 should be held unconstitutional petitioner would not be entitled to an abatement of any portion of his tax, so that his only remedy is by petition for mandamus.

Wherefore your petitioner prays that this Honorable Court will issue its writ of mandamus in favor of your petitioner, directed to the respondent commanding him not to distribute or pay over in accordance with the provisions of Chapter 363 of the General Acts of 1919 any portion of the tax for the year 1920 or for the year 1921 raised from the petitioner under the provisions of Chapter 269 of the General Acts of 1916 or of Chapter 324 of the General Acts of 1919.

By his attorney,
PHILIP NICHOLS.

SUFFOLK ss.

On the twenty-first day of October, 1920 before me personally appeared the above-named William W. Knights and made oath that the matters alleged in the foregoing are true, except as to matters therein stated to be on information and belief, and that as to these matters he believes them to be true.

PHILIP NICHOLS,
Notary Public.
My commission expires Mar. 6, 1925.

(Endorsed:) 991 COMMONWEALTH OF MASSACHUSETTS. Supreme Judicial Court. Worcester ss. WILLIAM W. KNIGHTS OF HOPEDALE IN THE COUNTY OF WORCESTER vs. JAMES JACKSON, AS HE IS TREASURER AND RECEIVER

General of the Commonwealth of Massachusetts. Petition for Writ of Mandamus. Filed Oct 25 1920 Attest: T. S. Johnson, Clerk. Service of the within petition is hereby accepted this 27th day of October, 1920. J. Weston Allen.

Commonwealth of Massachusetts.

Worcester, ss. Supreme Judicial Court.

William W. Knights, of Hopedale in the County of Worcester,

v.

James Jackson, as he is Treasurer and Receiver-General of the Commonwealth of Massachusetts.

DEMURRER.

Now comes James Jackson, Treasurer and Receiver-General of the Commonwealth of Massachusetts, and demurs to said petition upon the following grounds.

1. Petitioner seeks to restrain, not compel, official action, and petition for a writ of mandamus is therefore not a proper remedy.

2. If petitioner has a right to have respondent restrained from performing the duty imposed upon him by chapter 363 of the General Acts of 1919, his proper remedy is by bill in equity praying that respondent be enjoined from performing said duty.

3. Petitioner does not allege any individual right in himself which would be enforced or vindicated by a writ of mandamus.

4. Petitioner does not allege that respondent owes

any duty to him individually which should be enforced by a writ of mandamus.

5. The petition purports to seek the enforcement of the constitution of the Commonwealth and the constitution of the United States, and therefore should be filed by the Attorney-General in behalf of all the inhabitants of the Commonwealth.

6. The petition does not allege that respondent has failed to perform or has refused to perform any ministerial duty imposed upon him by law.

7. The petition does not allege that respondent has failed to exercise or has refused to exercise his discretion in any matter with respect to which the law imposes upon him a duty to exercise discretion.

8. It does not appear from the petition that sections 19 and 20 of chapter 269 of the General Acts of 1916 do not provide the petitioner with adequate remedies.

9. The petition seeks only that the respondent be commanded not to pay over, as provided by chapter 363 of the General Acts of 1919, a small fraction of the money collected pursuant to the provisions of chapter 269 of the General Acts of 1916. The issue of the writ would therefore be of no advantage to the petitioner and would inconvenience the respondent in the performance of his duties, and the petition does not commend itself to the sound discretion of this court.

10. Chapter 363 of the General Acts of 1919 is in all respects constitutional and valid.

JAMES JACKSON,
Treasurer and Receiver General,
By MAYNARD C. TEALL,
Assistant Attorney-General.

I hereby certify that in my opinion the foregoing demurrer presents a proper subject for judicial inquiry and is not filed for the purposes of delay.

MAYNARD C. TEALL,
Assistant Attorney-General.

(Endorsed:) Wor. ss. No. 991 William W. Knights v. James Jackson Treasurer & Receiver-General. DEMURRER. Filed Oct 29th 1920 Attest T. S. Johnson Clerk Suffolk S.S. Supreme Judicial Court Filed Oct 29 1920 John F. Cronin Clerk.

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER, ss. SUPREME JUDICIAL COURT.

WILLIAM W. KNIGHTS
vs.
TREASURER AND RECEIVER GENERAL (JAMES JACKSON).

RESERVATION.

This case is reserved upon the petition and demurrer for the determination of the Full Court.

EDWARD P. PIERCE.

(Endorsed:) 991 COMMONWEALTH OF MASSACHUSETTS. WORCESTER, ss. SUPREME JUDICIAL COURT WILLIAM W. KNIGHTS vs. TREASURER AND RECEIVER GENERAL. (JAMES JACKSON) RESERVATION. Filed Oct 29th 1920 Attest T. S. Johnson, Clerk

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER, ss. SUPREME JUDICIAL COURT.

WILLIAM W. KNIGHTS

v.

JAMES JACKSON, as he is Treasurer and Receiver General of the Commonwealth of Massachusetts.

CERTIFICATE.

I hereby certify that the question of law reserved in the above entitled cause for the determination of the Full Court requires, in the interest of the parties, a more speedy determination than can be reached in the next sitting of the Full Court established for the County of Worcester, and I hereby order that said reservation be entered and heard at the next sitting of the Court for the Commonwealth at Boston.

EDWARD P. PIERCE,

October 29, 1920. J.S.J.C.

(Endorsed:) 991 Worcester, ss Supreme Judicial Court William W. Knights v. James Jackson, as he is Treasurer and Receiver General of the Commonwealth of Massachusetts CERTIFICATE Filed Oct. 29, 1920 Attest T. S. Johnson, Clerk.

COMMONWEALTH OF MASSACHUSETTS.
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH.
At Boston, March 2, 1921.

IN THE CASE OF

WILLIAM W. KNIGHTS

v.

TREASURER & RECEIVER GENERAL

pending in the Supreme Judicial Court for the County of Worcester.

ORDERED, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,—

Petition dismissed.

By the Court,
C. H. COOPER,
Clerk.

March 2, 1921.

BRIEF STATEMENT OF THE GROUNDS AND REASONS OF THE DECISION.

The reasons of the decision are set forth at length in the opinion filed herewith, to which reference is made.

(Endorsed:) 991 No. 3928 (24 Worcester) SUPREME JUDICIAL COURT for the Commonwealth. Rescript, Worcester County. William W. Knights vs. Treasurer & Receiver General. Filed March 5th 1921 Attest T. S. Johnson Clerk.

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER ss. No.

SUPREME JUDICIAL COURT.

WILLIAM W. KNIGHTS

vs.

JAMES JACKSON, Treasurer & Receiver-General

JUDGMENT.

This case came on to be heard at this sitting upon the petitioner's motion for judgment in accordance with the rescript, and thereupon it is ordered that the petition be and the same is hereby dismissed.

By the court, sitting in Boston

JOHN H. FLYNN,

Aug. 1, 1921 Asst. Clerk.

(Endorsed:) 991 COMMONWEALTH OF MASSACHUSETTS WORCESTER, ss. SUPREME JUDICIAL COURT WILLIAM W. KNIGHTS vs. JAMES JACKSON, TREAS. & REC'R. GEN'L. Let this judgment be entered as of the first day of August 1921. Arthur P. Rugg Chief Justice. Filed August 1st 1921 Attest T. S. Johnson Clerk

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER, ss.

SUPREME JUDICIAL COURT.

I, Theodore S. Johnson, Clerk of the Supreme Judicial Court, within and for the County of Worcester, hereby certify that the foregoing are true copies of papers in the record in the case of William W. Knights vs. James Jackson, Treasurer and Receiver-General on a petition for a writ of mandamus in said Supreme Judicial Court, which papers should be substituted for similar papers printed in the Transcript of Record, (commencing on page 3, number 5 to page 12, number 18, inclusive,) Supreme Judicial Court of the United States, October Term, 1921. No. 518. William W. Knights, Plaintiff in Error, vs. James Jackson, Treasurer and Receiver-General. In error to the Supreme Judicial Court of the State of Massachusetts. Filed September 7, 1921. (28,473).

In witness whereof I have hereunto set my hand and the seal of said Court, this twenty-first [seal] day of September, in the year of our Lord one thousand nine hundred and twenty-two.

T. S. JOHNSON,
Clerk.

FILED
JAN 23 1922
WM. R. STANSBURY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 518. 167

WILLIAM W. KNIGHTS, *Plaintiff in Error,*

v.

JAMES JACKSON, TREASURER AND RECEIVER-GENERAL OF MASSACHUSETTS.

MOTION TO ADVANCE.

And now comes the plaintiff in error in the above-entitled cause, and moves that the same be advanced for argument.

Reason for Motion.

The original proceeding was a petition for mandamus by an inhabitant of Hopedale, Massachusetts, owning property and receiving income subject to the Massachusetts income tax, against the Treasurer and Receiver-General, praying that the respondent be directed not to distribute or pay over in accordance with the provisions of chapter 363 of the General Acts of Massachusetts of 1919 any portion of the Massachusetts income tax raised from the petitioner. It was the contention of the petitioner that the aforementioned statute was unconstitutional, and this proceeding was brought by him to establish this contention.

The Massachusetts Income Tax Law (St. 1916, c.

269) is not a general tax on incomes, but is primarily a tax on the income from certain specified classes of intangible personal property, with also provision for the taxation of business income, of income from buying and selling securities, and from annuities. Income from real estate, from tangible personal property, from Massachusetts corporations, and from other important sources is not subject to the income tax, but such property is reached by taxation in other ways. The income tax is collected by the state, but the proceeds are distributed among the cities and towns of the state in accordance with St. 1919, c. 314, which statute was before this court and was held constitutional in *Dane* v. *Jackson,* decided June 1, 1921.

Under statutes previously in force, and under St. 1919, c. 314, the proceeds of the income tax were distributed to the cities and towns of the state to be used for such purpose as they saw fit, and were mingled with the funds raised by taxation in other ways.

St. 1919, c. 363, appropriated from the proceeds of the income tax annually a sum amounting to approximately four million dollars, and devoted it to a particular public use, namely, the repayment to cities and towns of sums paid by them to teachers in the public schools receiving salaries of more than a certain amount. St. 1919, c. 324, levied an additional income tax to be distributed as the previously established income tax was distributed.

It is the petitioner's contention that St. 1919, c. 363, by itself, or, if not by itself, in connection with St. 1919, c. 324, resulted in the levy of a special tax on a particular class of property for a particular public purpose, without any relation to the benefit to be de-

rived by the property taxed from the expenditure of the money raised by the tax, and thus deprived him of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

It is apparent that this statute is a most important element in the fiscal system of the Commonwealth of Massachusetts and of all its cities and towns, and, until its constitutionality is finally decided, no city or town can be certain of the amount which it is to receive from the income tax, or whether amounts which it has already received must be refunded. Unless the matter can be promptly decided, this uncertainty will continue.

The petitioner has spared no effort to bring the matter before the court promptly. St. 1919, c. 363, was enacted July 24, 1919. A referendum petition was filed, so that the law did not go into effect for ninety days, and it was physically impossible to have the questions of law heard and determined before November 15, 1919, the date of distribution fixed by the statute; and moreover, the term of office of Charles L. Burrill, the Treasurer and Receiver-General, expired at the end of 1919, so that no effective relief could be had in any event. Proceedings were, however, brought early in the following year against Fred J. Burrell, who became Treasurer and Receiver-General in 1920, and were heard before the full bench of the Supreme Judicial Court of Massachusetts in September, 1920.

Shortly before the argument before the full court Fred J. Burrell resigned his office, and, upon his resignation being called to the attention of the court by plea in abatement, the plea was sustained, the peti-

tioner being denied leave to amend by the substitution of James Jackson, the succeeding Treasurer, as party respondent. *Knights* v. *Treasurer & Receiver General*, 236 Mass. 336. The present proceeding was then begun against the aforesaid James Jackson, and has been pressed as rapidly as possible. The term of James Jackson as Treasurer and Receiver-General expires on the first Wednesday in January, 1923. Massachusetts Constitution, Amendment 64, sec. 1.

It is urged that this case be advanced and assigned for argument at the present term—

(1) Because of the importance of the question as affecting the entire fiscal system of all of the cities and towns of Massachusetts;

(2) Because, unless the case is advanced, it will not be reached in the ordinary course for argument until after the expiration of the term of office of the respondent, and no decision on the merits can be had.

Respectfully submitted,
PHILIP NICHOLS,
Attorney for Plaintiff in Error.

The defendant in error waives notice of the presentation to the court of the foregoing motion, and joins in urging that it be allowed.

J. WESTON ALLEN,
Attorney for Defendant in Error.

Supreme Court of the United States.

October Term, 1922.

No. 167.

WILLIAM W. KNIGHTS,
PLAINTIFF IN ERROR,

v.

JAMES JACKSON, TREASURER AND RECEIVER GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS.

Brief for William W. Knights, Plaintiff in Error.

PHILIP NICHOLS,
Counsel for Plaintiff in Error.

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Supreme Court of the United States.

October Term, 1922.

No. 167.

WILLIAM W. KNIGHTS,
PLAINTIFF IN ERROR,
v.
JAMES JACKSON, TREASURER AND RECEIVER GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS.

Brief for William W. Knights, Plaintiff in Error.

Statement of the Case.

The case arises on a petition for writ of mandamus, brought originally in the Supreme Judicial Court of Massachusetts for the County of Worcester, against the Treasurer and Receiver General of the Commonwealth of Massachusetts, and is based upon a state of facts in substance as follows:

In Massachusetts the revenues of the various cities and towns, so far as they are raised by taxation, are derived from the following sources:

(1) A tax on real estate, tangible personal property, and stock in national banks assessed by the local assessors on capital value at a uniform rate within each city and town.

(2) A tax on polls at a uniform rate throughout the state.

(3) Excise taxes on domestic and certain foreign corporations, assessed by the state at a uniform rate throughout the state, and distributed in part to the various cities and towns.

(4) A tax on the income of certain classes of intangible personal property at the rate of six per cent per annum, on the income from professions, employments, trade, or business at the rate of one and one half per cent per annum, and on other minor sources at rates established by law. This tax is assessed and collected by the state, but the whole of the proceeds in excess of the cost of collection is distributed to the various cities and town.

Of these taxes in 1920 the tax on polls and on real estate and tangible personal property produced $123,500,000, which was paid by 1,589,303 persons, of whom 770,490 paid a property tax and 818,813 a poll tax only.

The income tax produced for the cities and towns, $16,400,000, and was paid by less than 240,000 persons.

Prior to 1919 all of these taxes were assessed for general public purposes. In 1919, however, the legislature was met by an insistent demand on the one hand for an increase in the pay of teachers in the public schools and on the other by the protests of the general taxpayers against further increases in the burden of taxation. This situation was met by appropriating a large sum, amounting to several million dollars annually, as a reimbursement to cities and towns for the payment of salaries above certain established limits to teachers in the public schools, and imposing the whole burden upon an arbitrarily selected

class of taxpayers—namely, the comparatively limited class of persons who pay an income tax, instead of upon the taxpayers as a whole. St. 1919, c. 363. At the same time the deficiency in general revenue created by this enactment was made up by an additional tax on business incomes. St. 1919, c. 324, sec. 1.

The sole question is whether these statutes, in imposing a tax for a special public purpose upon an arbitrarily selected class of property, violate the Fourteenth Amendment to the Constitution of the United States.

Statutes Material to the Case.

(1) The Income Tax Act.

General Acts of 1916, Chapter 269, Section 2, as amended by Chapters 7 and 120 of the General Acts of 1918:

Income of the following classes received by any inhabitant of this commonwealth during the calendar year prior to the assessment of the tax shall be taxed at the rate of six per cent per annum:

(a) Interest from bonds, notes, money at interest and all debts due the person to be taxed, except from:

First: Deposits in any savings bank chartered by this commonwealth or in the Massachusetts Hospital Life Insurance Company, or such of the deposits in the savings department of any trust company so chartered as do not exceed in amount the limits imposed upon deposits in savings banks by section forty-six of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, and acts in amendment thereof and in addition thereto, and deposits in any bank situated in the state of New Hampshire, so long

as the provisions of chapter one hundred and eighty-nine of the Public Acts of nineteen hundred and seventeen of that state remain in force, and deposits in any bank in any other state which exempts from taxation to its inhabitants similar deposits, and interest and dividends thereon, owned by such inhabitants in banks in this commonwealth.

Second: Bonds of the United States and such bonds, notes and certificates of indebtedness of the commonwealth and of political subdivisions thereof as are exempt from taxation under the provisions of clause fifteen of section five of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto.

Third: Loans secured exclusively by mortgages or real estate, taxable as real estate, situated within the commonwealth, to an amount not exceeding the assessed value of the mortgaged real estate.

(b) Dividends on shares in all corporations and joint stock companies organized under the laws of any state or nation other than this commonwealth, except national banks and except such foreign corporations as are subject to a tax upon their franchises payable to this commonwealth under the provisions of sections forty-three and fifty-two of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto.

(c) Dividends on shares in partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, except dividends on shares of the following:

First: Partnerships, associations or trusts, which file with the tax commissioner the agreement hereinafter provided for, and the property of which consists exclusively of one or more of the following specified kinds of property, to wit:—real estate wherever situated and supplies therefor and receipts therefrom; stocks of corporations taxable under the provisions of sections forty-three and fifty-two of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto; bonds, notes, loans secured by mortgage of real estate, and certificates of indebtedness, the income of which is exempt from taxation under the provisions of this section, property the income of which, if any, would be taxable under this section if owned by an inhabitant of the commonwealth; shares in partnerships, associations or trusts, dividends on which are exempt from taxation under this section.

Second: Partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, which file such agreement and furnish satisfactory proof to the tax commissioner that two thirds, at least, of their taxable property is taxed within the commonwealth and that the remainder, if taxable, is taxed where it is situated.

Partnerships, associations or trusts, the dividends on shares of which are exempt from taxation under this section, shall pay to the tax commissioner annually a tax of six per cent of the income derived from any property owned by such partnerships, associations or trusts, so far as such income would be taxable under

this section if received by an inhabitant of the commonwealth.

Dividends on the shares of any partnership, association or trust, of the classes designated in paragraphs first and second of subsection (c) of this section shall be subject to taxation under this section unless the trustees or managers of such partnership, association or trust shall file with the tax commissioner, in such form as he shall determine, its agreement to pay to the commonwealth annually the tax imposed by the preceding paragraph and any tax imposed by section five of this act. In case of any breach of the terms of any such agreement, the same may be enforced by information in equity to be brought by the attorney-general at the relation of the tax commissioner in the supreme judicial court for the county of Suffolk. This remedy shall be in addition to all other means of collection provided by this act, and to the penalties hereinafter imposed.

For the purposes of this act any securities of the classes designated in this section, held in pledge, or on margin or otherwise, by an agent or broker as security for a debt of the principal, whether such securities stand in the name of the principal or of any other person, shall be deemed to be the property of the principal, and the income arising therefrom shall be included in the total income of the principal under this section.

No distribution of capital, whether in liquidation or otherwise, shall be taxable as income under this section; but accumulated profits shall not be regarded as capital under this provision.

Section 5:

Income of the following classes received by any inhabitant of this commonwealth, during the calendar year prior to the assessment of the tax, shall be taxed as follows: . . .

(b) The excess over two thousand dollars of the income, as defined in section six, derived from professions, employments, trade or business shall be taxed at the rate of one and one half per cent per annum. In determining such income the rental value of living quarters furnished any individual as part of his compensation shall be included. The wages and salaries of employees and officers of the United States government shall not be taxed; but if such employees and officers receive other income taxable under this section, that part of such other income shall be taxed which, when such other income is added to the amount of the wages or salary received as an employee or officer of the United States government, shall be in excess of two thousand dollars.

(2) The Additional Income Tax Act of 1919.

General Acts of 1919, Chapter 324, Section 1:

There is hereby imposed, in addition to the income taxes levied under the provisions of chapter two hundred and sixty-nine of the General Acts of nineteen hundred and sixteen, and all acts in amendment thereof and in addition thereto, an additional tax of one per cent on all income received during the calendar years nineteen hundred and eighteen and nineteen hundred and nineteen, taxable under the provisions of paragraph (b) of section five of the said chapter. All pro-

visions of law relative to the assessment, payment, collection and abatement of the said income taxes shall apply to the additional tax imposed by this act.

(3) The School Fund Act.

General Acts of 1919, Chapter 363:

An Act to provide for the distribution of a portion of the income tax, and of the income of the Massachusetts school fund, for the purpose of improving the public schools.

Be it enacted, etc., as follows:

Part I.

Section 1. The treasurer and receiver general shall, on or before the fifteenth day of November, nineteen hundred and nineteen, and annually thereafter, set aside from the proceeds of the income tax a sum of money sufficient to provide for the purposes of Part I of this act, and which shall be available therefor without further appropriation by the general court.

Section 2. The treasurer and receiver general shall, as herein provided, distribute said sum on or before the fifteenth day of November, nineteen hundred and nineteen and annually thereafter, to the several cities and towns of the commonwealth as reimbursement, in part, for expenditures for salaries of teachers, supervisors, principals, assistant superintendents, and superintendents of schools for services rendered in the public day schools during the year ending on the thirtieth day of June next preceding.

Section 3. For each person employed for full time service for the entire school year as teacher, supervisor, principal, assistant superintendent, or superin-

tendent of schools, the city or town shall be reimbursed as follows:—

(1) Two hundred dollars for every such person who has received as salary not less than eight hundred and fifty dollars and who is a graduate of an approved normal school or college and has had at least two years' teaching experience or who possesses preparation and teaching experience accepted in lieu thereof.

(2) One hundred and fifty dollars for every such person, not included in the foregoing classification, who has received as salary not less than seven hundred and fifty dollars and (*a*) who has satisfactorily completed one year of professional training in an approved normal school or teachers' training school, and has had at least three years of teaching experience; or (*b*) is a graduate of an approved normal school or college, and has had at least one year of teaching experience; or (*c*) who possesses preparation and teaching experience accepted in lieu of either of the foregoing requirements in this paragraph.

(3) One hundred dollars for every such person, not included in either paragraphs (1) or (2), who has received as salary not less than six hundred and fifty dollars.

Section 4. For each teacher, supervisor, principal, assistant superintendent, or superintendent of schools, employed for less than full time service for the school year, the city or town shall be reimbursed such a fractional part of the corresponding reimbursement for full time service provided for in section three of this act as that service bore to full time service: *provided, however*, that the person for whom the reimbursement is claimed shall have met the corresponding require-

ments of certification, if any, specified in section three, and shall have received as salary an amount not less than that fraction of the corresponding salary for full time service specified in section three. No town in a superintendency union shall, under the provisions of this act, receive reimbursement for the part time employment of a superintendent of schools if the town is entitled to reimbursement for such employment in accordance with laws relating to superintendency unions.

SECTION 5. Every city or town in which the valuation of its real and personal property, including omitted assessments, for the city or town fiscal year next preceding the date of distribution, when divided by the net average membership of its public day schools, as defined in section six of this act, for the year ending on the thirtieth day of June next preceding the date of distribution, yields a quotient less than forty-five hundred dollars, shall receive supplementary reimbursements determined as follows:—

For each person for whom the city or town received reimbursement for full time service, in accordance with section three, the supplementary reimbursement shall be as follows:—

(1) Three hundred dollars if said valuation per pupil is less than two thousand dollars.

(2) Two hundred and fifty dollars if said valuation per pupil is less than twenty-five hundred dollars but not less than two thousand dollars.

(3) Two hundred dollars if said valuation per pupil is less than three thousand dollars but not less than twenty-five hundred dollars.

(4) One hundred and fifty dollars if said valuation

per pupil is less than thirty-five hundred dollars but not less than three thousand dollars.

(5) One hundred dollars if said valuation per pupil is less than four thousand dollars but not less than thirty-five hundred dollars.

(6) Fifty dollars if said valuation per pupil is less than forty-five hundred dollars but not less than four thousand dollars.

For each person for whom the city or town received reimbursement for part time service, in accordance with section four, the supplementary reimbursement shall be such a fractional part of the corresponding supplementary reimbursement provided for full time service as that service bore to full time service.

Argument.

I. A TAX ON A PARTICULAR CLASS OF PROPERTY TO RAISE REVENUE FOR A PARTICULAR PUBLIC PURPOSE IS A VIOLATION OF THE FOURTEENTH AMENDMENT WHEN THE PROPERTY TAXED DERIVES NO SPECIAL AND PECULIAR BENEFIT FROM THE EXPENDITURE OF THE REVENUE SO RAISED.

It is a universally accepted principle of taxation that taxes on property should be levied in accordance with some reasonable rule of apportionment. In fact a levy which is not so made is not within the commonly accepted definition of "tax."

It is stated in 26 Ruling Case Law, 13, with ample citation of authority that—

> "A tax is an enforced contribution of money or other property, *assessed in accordance with some reasonable rule of apportionment* by author-

> ity of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses."

A more arbitrary exaction of money from the taxpayers, not levied in accordance with some reasonable rule of apportionment, is a taking of their property without due process of law.

> *Norwood* v. *Baker*, 172 U.S. 269.
> *Royster Guano Co.* v. *Virginia*, 253 U.S. 412.

There are but two methods of apportionment known to the law—namely, benefit to the taxpayer and ability to pay. However crudely these methods of apportionment are approximated, they must be the basis, and a statute which is designed to apportion the burden of a tax in some other way is necessarily unconstitutional.

Applying these principles in practice, there are but three classes of property tax known to the law, namely, (1) the general tax, (2) the special assessment, (3) the special tax.

A general tax is a tax assessed upon all the taxable persons and all the taxable property within the taxing district, in order to pay the public expenses of the district as a whole, and is not apportioned in accordance with the benefit which each taxpayer receives from the expenditure of the public funds during the year, since the benefits of living as a member of organized society are incapable of apportionment; and a general tax is accordingly apportioned according to ability to pay.

As was said by Adam Smith, Wealth of Nations, book v, c. 1, part IV, expenses—

> "which are laid out for the benefit of the whole society . . . should be defrayed by the general contribution of the whole society, all the different members contributing as nearly as possible in proportion to their respective abilities."

Special assessments, on the other hand, are assessed on only a part of the taxable property in the district, in order to defray the expense of a particular public improvement, and are apportioned in proportion to the benefit received by the property taxed from the establishment of such improvement.

The distinction between general taxes and special assessments has been frequently pointed out. Thus it was said by the court in *Illinois Central R.R. Co.* v. *Decatur,* 147 U.S. 197:

> "Taxes proper, or general taxes, proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute, and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all. . . . On the other hand, special assessments, or special taxes, proceed upon the theory that when a local improvement en-

hances the value of neighboring property that property should pay for the improvement."

Other cases in which the distinction has been well stated include the following:

Taylor v. *Palmer*, 31 Cal. 240.
Holley v. *Orange*, 106 Cal. 420.
New London v. *Miller*, 60 Conn. 112.
Harmon v. *Bolley* (Ind.), 120 N.E. 33.
Shreveport v. *Prescott*, 51 La. Ann. (1895) 1905.
Dorgan v. *Boston*, 12 Allen (Mass.), 223, 235.

Under the Federal Revenue Act, Regulations 45, art. 133, distinguishing between general taxes and special assessments for purposes of deduction, it is said:

"The taxes deductible are those levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction."

Rosewater, in his article on Special Assessments in 2 Columbia University Studies in History, Economics and Public Law, 483, recognized as the best treatment of the subject from an historical and economic standpoint, says:

"Of these—the contributions included within the taxing power—a threefold division may be made, according as we view them from the standpoint of the special advantages accruing from their

application. At that end of the scale which represents the extreme of specific individual benefit, distinct, traceable and measurable, we have those impositions treated of in this work under the name of special assessments. At that end of the scale which represents the extreme of general benefit. Indistinguishable as far as the individual is concerned and merged in the blessings of government common to all, we must place those contributions known as taxes. The only justifiable foundation for a system of special assessments lies in the special benefits conferred; the only justifiable foundation for a system of general taxation lies in the faculty or ability of the subject to pay. Midway between these two classes of impositions falls the third class of fees or tolls."

There is, however, a third form of property tax which, though not so common as the other two, is known to the law and is commonly called a special tax. *A special tax is a tax levied for a particular public purpose upon the property benefited by the carrying out of that purpose, but apportioned according to ability to pay.* Common examples of this tax are district taxes, which are assessed on all the property in a road district to pay for a road, or in a watch district to pay for police protection, or in a school district to pay for a school.

Such taxes have the sanction of considerable antiquity, as we find a sewer statute of 1427 (6 Hen. VI, c. 4) drawn up on such a principle. But, it is said in the Report of the Poor Law Commissioners on Local Taxation, p. 65:

> "It is an indespensable condition [of the sewers rate] that a person taxed may by possibility receive benefit from the expenditure of the tax, and therefore holders of mountainous or high ground which cannot be surrounded are in general exempt. Still, the exact measure of the benefit is not the measure of the liability to be taxed."

These taxes are recognized by the economists who have made a study of the subject. Thus Rosewater says, at page 483 of the article on Special Assessments referred to *supra,* that in the case of special taxes—

> "The question of benefit is jurisdictional only; it is regarded as fixing upon the district of taxation or the persons or property subject to taxation and no further. As between the taxpayers within the district, the special tax is levied not according to individual benefits but according to evidence of ability to pay."

Seligman, in his Essays on Taxation, 9th edition, says, at page 416:

> "A general tax, like the ordinary state or local tax in America, is not levied for any definite, particular expenditure, but is assessed for general governmental purposes; a special tax . . . is assessed for the accomplishment of some special task to which the government is pledged, and is levied on a definite section of the population . . . But this special tax is none the less a veritable tax; it is levied for a public purpose; it is assessed on what is deemed to be the faculty or 'means' of the taxpayer, and there are particular benefits accruing to him as an individual"—

and at page 438:

> "A general tax is a tax levied for general public purposes. But it may happen that government desires to raise money for some special purpose, and the tax is then called a special tax. Thus there may be a special tax levied upon the whole community to defray the cost of a war, or there may be a special local tax to defray the cost of some particular department. So too in a few of the American states, like New Jersey, we find not only a special school tax, but special taxes, of the same nature as the English local rates for police or for lighting or for fire purposes. Here indeed a special section of the community is singled out, and one area is subject to the poor rate, while perhaps another is subject to the watching or the lighting rate. The charge however is still a tax, levied according to the generally recognized criterion of ability."

This form of taxation has been held by the Supreme Court of the United States to constitute due process of law.

> *Houck* v. *Little River Drainage District*, 239 U.S. 254.

This exhausts the permissible forms of taxation. It is not due process of law for the legislature to levy a property tax for a particular public purpose on an arbitrarily selected class of property within the district taxed which derives no special and peculiar benefit from the public undertaking for which the tax is levied: such a tax is not a valid general tax, because it is not

assessed on all taxable property, nor is it a valid special assessment, or a valid special tax, because it is not based on special benefit to the property taxed, and it is apportioned neither according to benefit nor ability to pay; and yet that is in substance what was done in the present case; for it is conceded that the property subject to the income tax derived no greater benefit from increased efficiency of the public schools that was expected to follow as a result of this expenditure than real estate and other forms of taxable property; and income of a limited and particular class is no measure of ability to pay.

It was said by Congressman A. Piatt Andrew in debate on the "Bonus Bill," recently vetoed by the President, that a special excise tax for a special public purpose was almost without precedent in the history of federal finance; and a direct tax on a particular class of property for a special purpose has certainly never been imposed by the United States. Such a tax is unknown in Great Britain, as all public revenues are turned into and appropriated out of the general fund. There have been instances among the states of excise taxes imposed for particular public purposes, but generally, if not universally, in cases when there is some direct relation between the subject of the tax and the expenditure, as an excise tax on fire insurance companies to provide revenues for fire prevention. It is believed that there is no instance of a property tax on a particular class of property for a particular public purpose when there was no relation of special benefit between the subject of the tax and the expenditure.

The danger of allowing the legislature, either federal or state, to settle a controversy between a large and

influential group of citizens who insistently demand an expenditure for a particular purpose on the one side and the taxpaying public which is unwilling to bear the burden on the other, by appropriating the money and saddling the whole expense upon a certain arbitrarily selected class of taxable property and a numerically limited group of taxpayers, is obvious, for the taxpayer is deprived of the protection which Chief Justice Marshall stated was the principal safeguard against oppressive and unjust taxation, namely, the accountability of the body levying the taxes to its constituents; for it is at once perceived that a legislature levying an imposition upon a limited number of taxpayers is not under the ordinary influence exercised by constituents on their representatives.

It is believed that if the legislature had enacted a law levying a tax directly on the limited class of property subject to the income tax for the purpose of providing additional salaries for the school teachers, the statute would be clearly unconstitutional. The only question remaining is whether the legislature can accomplish the same result by indirect means.

II. The Legislation Complained of in Effect Levies a Property Tax on a Special and Limited Class of Property for a Particular Public Purpose, Conferring no Special Benefit on the Property Taxed.

(*1*) *The Massachusetts Income Tax is a Property Tax and Not an Excise.*

It is well settled by the decisions of the Supreme Judicial Court of Massachusetts that the Massachusetts Income Tax is a property tax and not an excise.

It was said by the court in *Opinion of the Justices*, 220 Mass. 613, at page 623:

"A tax upon income from money on deposit or at interest, from bonds, notes or other debts due, and as dividends from stocks, coupled with exemption from all other taxation of the principal from which such income flows, is in substance and effect a tax upon the property from which it is derived. A tax upon the income of property is in reality a tax upon the property itself. Income derived from property is also property. Property by income produces its kind, that is, it produces property and not something different. It does not matter what name is employed. The character of the tax cannot be changed by calling it an excise and not a property tax. In its essence a tax upon income derived from property is a tax upon the property. . . . It follows that a tax upon such income is a property and not an excise tax."

In *Hart* v. *Tax Commissioner*, 240 Mass. 37, it was said by the court, at page 39:

"It follows that our income tax, under the present statutes at least, is not an excise, where the income of a preceding year might be taken as a measure in imposing it. In this respect it may differ from the federal income tax, which apparently in some aspects and applications may be an excise. *Brushaber* v. *Union Pacific Railroad*, 240 U.S. 1. Nor is it a personal tax. Accordingly the doctrine of *mobilia personam sequuntur* has no application. It is laid directly on the income of property, and as already stated is in reality a tax on the property itself."

The same conclusion was reached in the following cases:

Tax Commissioner v. *Putnam,* 227 Mass. 522, 531.
Kimball v. *Cotting,* 229 Mass. 541, 543.
Maguire v. *Tax Commissioner,* 230 Mass. 503, 512.

In *Raymer* v. *Tax Commissioner,* 239 Mass. 410, it was expressly held that the income from professions, employments, trade or business, subject to the tax, is income derived from property.

(2) *A Perpetual Appropriation out of the Proceeds of a Tax Levied Annually by a Permanent Statute is Equivalent to the Levy of a Tax for the Purpose of the Appropriation.*

A taxpayer has a constitutional right to refuse to pay a tax which is not levied for a lawful purpose.

Loan Association v. *Topeka,* 20 Wall. 655.
Green v. *Frazier,* 253 U.S. 233.

It necessarily follows that provision for the disposition of the proceeds of the tax is an essential part of every levy of a tax on property, so that the taxpayer can determine whether he is assessed for a lawful purpose and either contest payment of the tax or insist that the proceeds of the tax be not diverted to an unlawful purpose.

It can make no difference whether a new tax is levied for an unlawful purpose, or a perpetual appropriation is made from the proceeds of a tax levied annually by authority of a permanent statute. Each year after the enactment of the statute making disposition of the

proceeds of the tax the assessment of the tax is equivalent to a levy of a tax for the purpose of the appropriation.

(3) *The Statute Diverting Part of the Proceeds of the Income Tax and the Statute Imposing an Additional Income Tax must be Considered together as Parts of one and the same Law.*

The statute diverting a portion of the proceeds of the income tax for school purposes and the statute imposing an additional income tax of a substantially equivalent amount to be paid into the general funds of cities and towns were enacted by the same legislature and approved by the Governor only six days apart, and must be considered together as parts of one and the same law.

International Paper Co. v. *Massachusetts*, 246 U.S. 135, 140.
Royster Guano Co. v. *Virginia*, 253 U.S. 412, 414.

By their combined effect, if the judgment under review be affirmed, the plaintiff in error will be required to pay a tax upon his property levied for a special purpose of no special benefit to him or to his property which owners of the great mass of taxable property in the state will not be obliged to pay, and it therefore follows that he will be deprived of his property without due process of law; in violation of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,
PHILIP NICHOLS,
Counsel for Plaintiff in Error.

Supreme Court of the United States

October Term, 1921.

WILLIAM W. KNIGHTS, PLAINTIFF IN ERROR,

v.

JAMES JACKSON, TREASURER AND RECEIVER GENERAL.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This is a petition for a writ of mandamus brought against the Treasurer and Receiver General of Massachusetts. The material allegations of the petition may be stated in very brief compass.

1. Gen. St. 1916, c. 269, § 2, as amended, imposes a tax of six per cent per annum upon interest from bonds, notes, money at interest and all debts due to the person to be taxed, with certain exceptions not now material, and upon certain classes of dividends. (Rec., pp. 3–5.)

2. Section 5, subsection (*b*), of said statute imposes a tax of one and one-half per cent per annum upon the excess over two thousand dollars of income derived from professions, employments, trade or business, with certain exceptions not now material. This act is not assailed. (Rec., p. 5.)

3. Gen. St. 1919, c. 324, § 1, imposed an additional tax of one per cent per annum upon all income received in 1918 and 1919 which was taxable under Gen. St. 1916, c. 269, § 5, cl. (*b*). This act is not assailed. (Rec., p. 5.)

4. The petitioner, who is plaintiff in error here, received income taxable under Gen. St. 1916, c. 269, § 5, cl. (*b*), and the said additional tax imposed by Gen. St. 1919, c. 324, § 1, is about to be assessed and collected from him. (Rec., p. 6.)

5. Gen. St. 1919, c. 363, provides, in substance, that on or before November 15 of each year the respondent shall pay over to the several cities and towns, from the proceeds of the income tax, an amount sufficient to reimburse them in part for certain designated expenditures for the support of public schools, which payments the respondent is about to make. (Rec., p. 6.)

6. The petitioner alleges that he receives no special and peculiar benefit from the expenditures under Gen. St. 1919, c. 363, other than the benefit which all citizens and all property derive therefrom; that as a result, he is specially taxed for a general public purpose; and that by reason thereof said Gen. St. 1919, c. 363, is in conflict with the Fourteenth Amendment and is therefore unconstitutional and void. (Rec., pp. 6, 7.)

7. The prayer of the petition is that the respondent be restrained from paying over under said Gen. St. 1919, c. 363, any portion of the tax for 1920 raised from the petitioner.

8. The respondent demurred to the petition. (Rec., p. 9.)

9. The Supreme Judicial Court, on August 1, 1921, ordered that the petition be dismissed.

10. The petitioner thereupon sued out this writ of error, in which the following errors are assigned:

"(1) The Court erred in deciding that the provisions of Chapter 363 of the General Acts of 1919 imposing one of the public charges of government upon the inhabitants of the Commonwealth in proportion to their income from certain particular sources only were not in violation of the Fourteenth Amendment to the Constitution of the United States as denying to the plaintiff the equal protection of the laws.

(2) The Court erred in deciding that the provisions of Chapter 363 of the General Acts of 1919 imposing upon the plaintiff and his property and his income an assessment which was not imposed upon all persons and all property and all incomes subject to taxation within the commonwealth, which assessment was levied to raise funds for a particular public purpose which conferred no benefit upon him or upon his property which was not shared by the inhabitants of the commonwealth generally, were not in violation of the Fourteenth Amendment to the Constitution of the United States as depriving the plaintiff of his property without due process of law and as denying to the plaintiff the equal protection of the laws."

It will be observed that this case presents a very narrow issue. The petitioner does not assail either the original income tax act of 1916 or the supplementary act of 1919, c. 324. He does not allege that the promotion of education in the public schools is not a public purpose for which public money may be spent. His sole contention is that the distribution to the cities and towns, out of the proceeds of the income tax, for educational purposes, in the manner prescribed by Gen. St. 1919, c. 363, denies to him due process of law and the equal protection of the laws in violation of the Fourteenth Amendment, because some part of the

money so distributed may have been raised from the petitioner by the income tax laws above described. Reduced to its lowest terms we understand his contention to be that the income tax law imposes what is in effect a special assessment, and not a general tax, and that therefore the proceeds thereof must be devoted to purposes which confer special benefit upon those who pay such tax.

ARGUMENT.

I.

The Income Tax Law imposes a General Tax and not a Special Assessment.

Mass. Const., pt. 2d, c. I, § I, art. IV, provides, in part:

> "And further, full power and authority are hereby given and granted to the said general court [legislature], from time to time . . . to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth . . ."

Under this provision the state imposed a "proportional" property tax upon the several cities and towns, and the cities and towns in turn imposed a "proportional" property tax upon their inhabitants sufficient in amount to meet the state tax, the county tax and the local tax.

See Providence Institution for Savings *v.* Boston, 101 Mass. 575, 586.
Northampton *v.* Hampshire, 145 Mass. 108, 111.

In other words, a general property tax which included the state, county and local tax, was actually collected by the cities and towns which thus became, so far as the individual was concerned, the taxing subdivisions of the Commonwealth.

Dane *v.* Jackson, 256 U. S. 589, 595.

The word "proportional" did not require that the tax rate be uniform throughout the Commonwealth.

Providence Institution for Savings *v.* Boston, 101 Mass. 575, 586.
Northampton *v.* Hampshire, 145 Mass. 108, 111.

That requirement was satisfied if the amount raised in each city or town was levied upon the taxpayers in proportion to the amount of taxable real and personal property owned by each.

Opinion of the Justices, 220 Mass. 613, 618–619.

As the tax rate in the several cities and towns varied considerably, those towns which had a low tax rate became cities of refuge for persons taxed upon a large amount of personal property.

Dane *v.* Jackson, 256 U. S. 589, 599.

Especially in the case of intangible personal property efforts were made to devise some state-wide system which would more nearly equalize the burden, but the

constitutional requirement that taxes be "proportional" proved a stumbling block.

> Opinion of the Justices, 195 Mass. 608.
> Opinion of the Justices, 208 Mass. 616.
> Perkins *v.* Westwood, 226 Mass. 268.

Ultimately the people adopted Amendment XLIV, which provides:

> "Full power and authority are hereby given and granted to the general court to impose and levy a tax on income in the manner hereinafter provided. Such tax may be at different rates upon income derived from different classes of property, but shall be levied at a uniform rate throughout the commonwealth upon incomes derived from the same class of property. The general court may tax income not derived from property at a lower rate than income derived from property, and may grant reasonable exemptions and abatements. Any class of property the income from which is taxed under the provisions of this article may be exempted from the imposition and levying of proportional and reasonable assessments, rates and taxes as at present authorized by the constitution. This article shall not be construed to limit the power of the general court to impose and levy reasonable duties and excises."

It will be observed that this amendment relaxes, as to income, the requirement that taxes shall be proportional, requires that the tax upon income derived from the same class of property "shall be levied at a uniform rate throughout the Commonwealth" and permits any class of property the income from which is taxed under it, to be exempted from proportional taxes. Under the authority so conferred the Legislature

enacted Gen. St. 1916, c. 269, which was upheld in Tax Commissioner *v.* Putnam, 227 Mass. 522. The scope of this act was thus described by this court in Dane *v.* Jackson, 256 U. S. 589, 595:

"Pursuant to this authority, a law was enacted in 1916 (General Acts, 1916, c. 269), which it is sufficient to describe as taxing, with exceptions negligible here: income received from bonds, notes, money at interest and debts due the person paying the tax; dividends on shares of any corporations not organized under the laws of Massachusetts; dividends on shares in partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares; and income derived from professions, employments, trade or business. Intangible property, the income from which is taxed by the act, is practically exempted from local taxation."

Speaking broadly, Gen. St. 1916, c. 269, imposed taxes at the rates specified, upon the income derived from substantially all classes of intangible personal property, which rates were uniform throughout the Commonwealth, and in turn exempted from local and proportional taxation the classes of property from which such income was derived. Gen. St. 1919, c. 324, simply increased by one per cent the tax in 1918 and 1919 upon the income derived from business, professions, trades and employments already taxed under Gen. St. 1916, c. 269, § 5, cl. (*b*). It follows that the taxes imposed by Gen. St. 1916, c. 269, and by Gen. St. 1919, c. 324, are not special assessments levied upon particular property in proportion to the benefit received from some improvement, but are, on the contrary, general taxes, levied throughout the state

as a single taxing district in order to support the expenses of government.

Duffy *v.* Treasurer and Receiver General, 234 Mass. 42, 49, 51, affirmed *sub. nom.* Dane *v.* Jackson, 256 U. S. 589.
See also Illinois Central R.R. *v.* Decatur, 147 U. S. 190, 197.

The petitioner urged below, and may urge here, that the income tax laws, namely, Gen. St. 1919, c. 324, and Gen. St. 1916, c. 269, become special assessments because Gen. St. 1919, c. 363, § 1, directs that the reimbursement therein provided for is to be made "from the proceeds of the income tax." But plainly the inherent nature of the income tax is not changed by the uses to which the proceeds are put. A further answer to this contention is found in Mass. Const. Amend. LXIII. Section 1 of that amendment provides:

"All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof."

Pursuant to the mandate of this section both the income tax of 1916 and the additional income tax of 1919 are paid into the treasury and are there commingled with all other public moneys therein.

Knights *v.* Jackson (Rec., p. 15).

They thereby lose all identity except for accounting purposes. The payment made under Gen. St. 1919, c. 363, is paid out of the treasury, and is charged to a particular fund; it is not paid out of the segregated proceeds of the tax.

Said Article LXIII, section 4, provides:

"After final action on the general appropriation bill or on recommendation of the governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained."

Gen. St. 1919, c. 363, was approved on July 24, 1919, *after* the general appropriation bill (Sp. St. 1919, c. 153) was passed, on April 23, 1919. It is a permanent act, and section 1 directs the required payments to be made annually "without further appropriation by the general court" (see G. L., c. 70, § 1). As the act is in effect an appropriation bill the reference to the income tax provides "the specific means for defraying the appropriations therein contained" as required by said Article LXIII, section 4. These specific means are doubtless restricted to the proceeds of the income tax because the income tax replaced the proportional tax upon intangible personal property, which, as has been shown above, was collected by the cities and towns. If the distribution upheld in Dane *v.* Jackson, *supra*, does not exhaust the proceeds of the income tax, the surplus of those proceeds becomes available for this purpose. Thus the reference to the proceeds of income tax as the source of the payment authorized by Gen. St. 1919, c. 363, serves the double purpose of satisfying said Article LXIII, section 4, and of restricting said payment to the proceeds of the general tax which replaced the proportional tax on intangible personal property. It does not transform the income tax into a special assessment.

II.

The Promotion of Education by Means of Common Schools is a General Public Purpose for which Public Money may be spent by the Commonwealth.

From the adoption of the Constitution in 1780 down to and including the present time Massachusetts has recognized and does recognize that government of the people, by the people and for the people cannot long endure if the people are ignorant and illiterate. Part 2d, c. V, § 2, of the Constitution provides in part:

> "Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; . . ."

This provision not only recognizes that the promotion and preservation of our rights and liberties depend upon popular education, but also makes it "the duty of legislatures . . . in all future periods of this commonwealth, to cherish . . . public schools and grammar schools in the towns; . . ." It would be difficult to declare in more apt words that such schools are not mere local affairs, to be conducted as each community shall see fit, but are on the contrary an instrument designed to accomplish a state-wide public purpose upon which the welfare of the whole Commonwealth depends.

The Constitution does not stop with a mere declaration of duty and principle, sufficient and conclusive as that might be in view of the broad power conferred upon the Legislature by Part 2d, c. I, § 1, art. IV, "to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions" not inconsistent with the Constitution. Amendment XVIII, adopted in 1855 and since superseded by Amendment XLVI, provided:

"All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own school."

This amendment expressly recognizes the power of the Legislature to appropriate money "for the support of common schools."

Amendment XX, adopted in 1857, further provides:

"No person shall have the right to vote, or be eligible to office under the constitution of this commonwealth, who shall not be able to read the constitution in the English language and write his name: *provided, however*, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be sixty years of age or upwards at the time this amendment shall take effect."

This amendment, which excludes the illiterate from the exercise of the ballot, makes a certain measure of popular education a condition precedent to the continued existence of the state government. Representative government cannot exist without an electorate, and under this amendment there can be no electorate unless the people are taught to read and to write their names.

Neither the principle of popular education nor the power of the Legislature to provide therefor by public schools is narrowed by Amendment XLVI, which, in 1917, superseded Amendment XVIII. Section 2 of Amendment XLVI provides:

"All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan

of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society."

This amendment, like Amendment XVIII, which it supersedes, recognizes the power of the Legislature to appropriate money "for the support of common schools."

In view of these provisions it is clear that the promotion of education by means of public schools is a general and state-wide rather than a local public purpose.

Hill *v.* Boston, 122 Mass. 344.
Fiske *v.* Huntington, 179 Mass. 571.
Opinion of the Justices, 214 Mass. 599.
Nichols, Em. Dom., § 75.

Expenditure of public money for a purpose which is, or may properly be declared to be, public, does not invade any rights secured to taxpayers by the Fourteenth Amendment.

Green *v.* Frazier, 253 U. S. 233.
Jones *v.* Portland, 245 U. S. 217.

If so any public money in the treasury might be appropriated for this purpose. Manifestly the fact that expenditure for public schools is limited to the proceeds of a particular tax, and so is restricted in amount, does not invade the rights of any taxpayer. No taxpayer can properly object because the amount which shall be spent for a general public purpose is measured by the proceeds of a particular general tax.

III.

Special Considerations sustain Gen. St. 1919, c. 363.

The cities and towns of Massachusetts are governmental subdivisions exercising powers and discharging duties conferred and imposed by the Legislature.

> Worcester *v.* Worcester, etc., St. Ry. Co., 196 U. S. 539.
> Dane *v.* Jackson, 256 U. S. 589.

From early times the Commonwealth has imposed upon the cities and towns the duty to maintain common schools.

> Prov. Laws, 1692–3, c. 26, § 5.
> St. 1789, c. 19, § 1.
> R. L., c. 42, § 1.
> G. L., c. 71, § 1.
> Commonwealth *v.* Dedham, 16 Mass. 141.
> Cushing *v.* Newburyport, 10 Met. 508.

Although locally maintained those schools are in no sense a local affair. Under the constitutional provisions heretofore referred to, the Commonwealth might have directly maintained such schools out of state funds. In discharging the statutory duty to maintain common schools the cities and towns perform a state-wide service as governmental subdivisions.

Under the school statute the cities and towns were required to raise by taxation the money necessary for the support of public schools.

> R. L., c. 42, §§ 22, 23.
> G. L., c. 71, § 42.

Prior to the imposition of the income tax by the Commonwealth the school tax was included in the proportional taxes imposed by the cities and towns upon real and personal property within their jurisdiction. The exemption of intangible personal property from proportional taxes levied by the cities and towns has left only real estate and tangible personal property subject to those taxes. Yet the duty to maintain common schools is still imposed upon the cities and towns. G. L., c. 71, § 1.

The reasons which required that a portion of the income tax be distributed to the cities and towns in order to make up for the loss of the tax upon intangible personal property apply with double force to a repayment of a part of that tax in order to enable the cities and towns to discharge their statutory duty to maintain common schools. While the distribution upheld in Dane *v.* Jackson, 256 U. S. 589, could be devoted by the cities and towns only to a public purpose, it might be applied to a public purpose of purely local character. The reimbursement for which Gen. St. 1919, c. 363, provides, is simply a repayment of a part of the cost of discharging a statutory duty of a public and state-wide character. If the repayment sanctioned by Dane *v.* Jackson, *supra*, does not contravene the Fourteenth Amendment, it is plain that the present repayment does not. Certainly that amendment does not require that the cost of common schools, formerly defrayed by a proportional tax upon real estate and upon personal property, tangible and intangible, shall now be borne by the local tax upon real estate and tangible personalty alone.

Conclusion.

Gen. St. 1919, c. 363, does not violate the Fourteenth Amendment for —

1. The maintenance of common schools is a general and state-wide public purpose which might be directly accomplished by the Commonwealth out of state funds.

2. As the Commonwealth has imposed upon cities and towns the duty to maintain such schools, it may properly pay to cities and towns a portion of the expense of discharging that duty.

3. The state income tax is a state-wide general tax, which goes into the treasury of the Commonwealth and is there commingled with all other state funds; it is not a special assessment based upon special benefit which must be so spent as to confer a special benefit upon those who pay it.

4. Since the income tax law exempted intangible personal property from proportional taxes collected through the cities and towns, and thereby diminished such proportional property tax out of which common schools are supported, no constitutional right of the income taxpayer is infringed by using a part of the income tax to reimburse cities and towns for expense incurred to discharge the statutory duty to maintain common schools.

Respectfully submitted,

J. WESTON ALLEN,
Attorney General.

EDWIN H. ABBOT, Jr.,
Assistant Attorney General.

KNIGHTS *v.* JACKSON, TREASURER AND RECEIVER GENERAL.

ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

No. 167. Argued October 3, 1922.—Decided October 16, 1922.

The objection that a tax on a special class of persons and property for a public purpose by which they are not benefited, is a taking of property without due process of law, in violation of the Fourteenth Amendment, does not apply to the general income tax of Massachusetts (Acts, 1916, c. 269, §§ 2, 5 (b), as amended, 1919, c. 324, § 1) and use of funds so derived (Acts, 1919, c. 363) to reimburse cities and towns for increase of educational salaries. P. 14. 237 Mass. 498, affirmed.

ERROR to a judgment of the Supreme Judicial Court of Massachusetts dismissing a petition for mandamus.

Mr. Philip Nichols for plaintiff in error.

A tax on a particular class of property to raise revenue for a particular public purpose is a violation of the Four-

teenth Amendment when the property taxed derives no special and peculiar benefit from the expenditure of the revenue so raised. *Norwood* v. *Baker*, 172 U. S. 269; *Royster Guano Co.* v. *Virginia*, 253 U. S. 412.

A general tax is a tax assessed upon all the taxable persons and all the taxable property within the taxing district, in order to pay the public expenses of the district as a whole.

Special assessments, on the other hand, are assessed on only a part of the taxable property in the district, in order to defray the expense of a particular public improvement, and are apportioned in proportion to the benefit received by the property taxed from the establishment of such improvement. *Illinois Central R. R. Co.* v. *Decatur*, 147 U. S. 197; *Taylor* v. *Palmer*, 31 Cal. 240; *Holley* v. *Orange*, 106 Cal. 420; *New London* v. *Miller*, 60 Conn. 112; *Harmon* v. *Bolley*, 187 Ind. 511; *Shreveport* v. *Prescott*, 51 La. Ann. 1905; *Dorgan* v. *Boston*, 12 Allen, 223, 235; Rosewater, Special Assessments, Studies in History, Economics and Public Law, 483.

A special tax is a tax levied for a particular public purpose upon the property benefited by the carrying out of that purpose, but apportioned according to ability to pay. Common examples of this tax are district taxes, which are assessed on all the property in a road district to pay for a road, or in a watch district to pay for police protection, or in a school district to pay for a school. Rosewater, *id.*, 483; Seligman, Essays on Taxation, 9th ed., pp. 416, 438.

The Massachusetts income tax is a property tax and not an excise. *Opinion of the Justices*, 220 Mass. 613, 623; *Hart* v. *Tax Commissioner*, 240 Mass. 37, 39; *Tax Commissioner* v. *Putnam*, 237 Mass. 522, 531; *Kimball* v. *Cotting*, 229 Mass. 541, 543; *Maguire* v. *Tax Commissioner*, 230 Mass. 503, 512; *Raymer* v. *Tax Commissioner*, 239 Mass. 410.

A perpetual appropriation out of the proceeds of a tax levied annually by a permanent statute is equivalent to the levy of a tax for the purpose of the appropriation. A taxpayer has a constitutional right to refuse to pay a tax which is not levied for a lawful purpose. *Citizens' Savings & Loan Assn.* v. *Topeka*, 20 Wall. 655; *Green* v. *Frazier*, 253 U. S. 233.

The statute diverting part of the proceeds of the income tax and the statute imposing an additional income tax must be considered together as parts of one and the same law. *International Paper Co.* v. *Massachusetts*, 246 U. S. 135, 140; *Royster Guano Co.* v. *Virginia*, 253 U. S. 412, 414.

Mr. Edwin H. Abbot, Jr., with whom *Mr. J. Weston Allen*, Attorney General of the State of Massachusetts, was on the brief, for defendant in error.

Mr. Justice Holmes delivered the opinion of the Court.

In Massachusetts taxes of a kind that used to be imposed by the cities and towns now are imposed and collected by the Commonwealth and afterwards distributed to the cities and towns to be expended for various public purposes. In this way are collected and distributed, with necessary exceptions, taxes upon the interest from debts, dividends from stock and from partnerships, Gen. Acts 1916, c. 269, § 2, and upon the excess over two thousand dollars per annum of income derived from professions and business, again with necessary exceptions, *id.* § 5(*b*), both as amended. *Dane* v. *Jackson*, 256 U. S. 589. The latter tax, under § 5(*b*), was increased one per cent. for the years 1918 and 1919 by an Act of 1919, c. 324, § 1. The validity of these taxes *per se* is not disputed. They make a comprehensive income tax. But by an Act of 1919, c. 363, the Treasurer and Receiver General is directed to set

aside and pay over to the cities and towns from the proceeds of the income tax a sum sufficient to reimburse them for specified increases of salaries of school teachers, supervisors, superintendents and the like. Thereupon the plaintiff in error, a taxpayer, brought this suit, a petition for mandamus, to prevent the respondent from paying over as directed, contending that the Act of 1919, c. 363, imposed a public charge upon a special class of property and persons not specially benefited by the services and for that reason was a taking of property without due process of law in violation of the Fourteenth Amendment. The Supreme Judicial Court, waiving questions of procedure, held that the income tax was a general tax; that the proceeds of the tax became part of the general funds of the State; that these funds could be expended for education, and that there was no appropriation of such a character as to make the tax a special tax for a special purpose or use. The petition was dismissed.

We see no reason for not accepting the views taken by the Supreme Judicial Court. The plaintiff in error asks us to connect the increase of the tax for two years by the Act of 1919, c. 324, with the reimbursement directed by c. 363, which he assails. This cannot be done, especially not for the purpose of attributing to the Legislature an attempt to achieve by indirection a result supposed to be beyond its power. The reimbursement from the general funds of the Commonwealth was lawful and to make it the funds must be provided. The fact that the end was contemplated, if it was, in this particular increase, is no more than was necessary in some form to bring about the result.

Judgment affirmed.